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15
16 **UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**
19

20 IN RE: DA VINCI SURGICAL
21 ROBOT ANTITRUST LITIGATION

22 THIS DOCUMENT RELATES TO:
23 ALL ACTIONS

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Case No.: 3:21-cv- 03825-AMO-LB

**INTUITIVE SURGICAL, INC.'S RESPONSE
TO THE COURT'S SUMMARY JUDGMENT
EVIDENTIARY CLARITY REQUESTS**

Judge: The Honorable Araceli Martínez-Olguín

Intuitive Surgical, Inc., submits the following in response to the Court's Evidentiary Clarity requests at the motions hearing held September 7, 2023. Page citations are to the ECF pagination. Publicly filed docket citations with no page citations reflect that a document was filed under seal in its entirety.

REQUEST: FDA messages to third-party service providers, including Rebotix, SIS, and any others.

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 1	Expert Report of Christy Foreman (submitted in this case)	ECF No. 153-9 at 38–51 (¶¶ 102–140); 53–56 (¶¶ 147–152, 155); 71–77 (¶¶ 215–232); 79–81 (¶¶ 241–244), and record materials cited and quoted therein	ECF No. 155-3 at 38–51 (¶¶ 102–140); 53–56 (¶¶ 147–152, 155); 71–77 (¶¶ 215–232); 79–81 (¶¶ 241–244), and record materials cited and quoted therein
Cahoy Ex. 22	Emails re “Rebotix AI Letter Conference Follow-Up” (REBOTIX077729 – REBOTIX077734)	ECF No. 153-29	ECF No. 155-12 at 6
Cahoy Ex. 23	Email from FDA to Ryan Burke (REBOTIX171058)	ECF No. 153-30	ECF No. 155-13 at 2
Cahoy Ex. 31	Emails between BPI Medical, Rebotix, and FDA re EndoWrists (BPI000331 – BPI000337)	ECF No. 153-38	ECF No. 155-19 at 5–8
Cahoy Ex. 32	FDA Deficiency Letter re Rebotix “Remanufactured EndoWrists” (REBOTIX171030 – REBOTIX171057)	ECF No. 153-39	ECF No. 155-20 at 2–29
Cahoy Ex. 34	Emails re “Request for More Information on Rebotix Repair Repairing/Service Activities” (REBOTIX146948 – REBOTIX146955)	ECF No. 153-41	ECF No. 155-22 at 2; 6–9

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 35	FDA Letter No. CPT2000126 to Rebotix (REBOTIX175417 – REBOTIX175418)	ECF No. 153-42	ECF No. 155-23 at 2–3
Cahoy Ex. 37	Emails re “Rebotix Repair, LLC re Document Number CPT200126” (REBOTIX175839 – REBOTIX175843)	ECF No. 153-44	ECF No. 155-25 at 2–6
Cahoy Ex. 38	Emails re “Restore Robotics -- Request for More Information (Restore-00001248 – Restore-00001256)	ECF No. 153-45	ECF No. 155-26 at 2–10
Cahoy Ex. 41	FDA Deficiency Letter re Iconocare 8mm Monopolar Curved Scissors (AHP000527 – AHP000537)	ECF No. 153-48	ECF No. 155-29 at 2–12
Cahoy Ex. 42	Emails re Iconocare Deficiency Notice (Restore-00086093 – Restore-00086120)	ECF No. 153-49	ECF No. 155-30 at 2–7; 9–26; 28–29
Cahoy Ex. 64	Emails re “Rebotix Repair, LLC re Document Number CPT200126” (REBOTIX175710 – REBOTIX175730)	ECF No. 153-71 at 2–10; 12–21	N/A

REQUEST: Statement from Intuitive’s experts that third-party EndoWrist Modifications constituted remanufacturing.

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 1	Expert Report of Christy Foreman (submitted in this case)	ECF No. 153-9 at 10–11 (¶ 16(b)); 51–56 (¶¶ 141–152); 59–65 (¶¶ 163–191); 67–71 (¶¶ 198–214); 85 (¶ 256); 86 (¶ 261)	ECF No. 155-3 at 10–11 (¶ 16(b)); 51–56 (¶¶ 141–152); 59–65 (¶¶ 163–191); 67–71 (¶¶ 198–214); 85 (¶ 256); 86 (¶ 261)

REQUEST: Statements from Intuitive and its experts stating that EndoWrist use limits are appropriate.

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entr(y/ies)
Rosa Decl.	Declaration of David Rosa	ECF No. 153-2 at 5–9 (¶¶ 22–35); 11–12 (¶ 45)	N/A
Cahoy Ex. 1	Expert Report of Christy Foreman (submitted in this case)	ECF No. 153-9 at 10–12 (¶ 16(b), (d)); 31–38 (¶¶ 75–101); 78–81 (¶¶ 235–244), and record materials cited and quoted therein	ECF No. 155-3 at 10–12 (¶ 16(b), (d)); 31–38 (¶¶ 75–101); 78–81 (¶¶ 235–244), and record materials cited and quoted therein
Cahoy Ex. 3	Expert Report of Dr. Robert D. Howe (submitted in this case)	ECF No. 153-11 at 11 (¶¶ 17–18); 36–45 (¶¶ 64–76), and record materials cited and quoted therein	ECF No. 152-2 at 11 (¶¶ 17–18); 36–45 (¶¶ 64–76), and record materials cited and quoted therein ECF No. 155-4 at 11 (¶¶ 17–18); 36–43 (¶¶ 64–76), and record materials cited and quoted therein
Cahoy Ex. 5	Excerpts of the Deposition of Margaret Marie Nixon (Oct. 7, 2022) (taken in this case)	ECF No. 153-13 at 5–8	N/A
Cahoy Ex. 6	Intuitive 510(k) Summary: Control System and Resposable Instruments (Intuitive-00691660 – Intuitive-00691661)	ECF No. 153-14 at 2	N/A
Cahoy Ex. 7	Intuitive 510(k) Summary: Control System and Resposable Instruments (Intuitive-00692314 – Intuitive-00692315)	ECF No. 153-15 at 2	N/A
Cahoy Ex. 66	Excerpts of the Deposition of Disha Peswani (Oct. 6, 2022) (taken in this case)	ECF No. 153-73 at 3–12	N/A

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entr(y/ies)
Cahoy Ex. 73	Excerpts of the Deposition of Nickola “Nicky” Goodson, 30(b)(6) designee for Intuitive (Oct. 27, 2022) (taken in this case)	ECF No. 154 at 4–6	N/A
Smith Ex. 1	Amended Expert Rebuttal Report of Dr. Loren K. Smith (submitted in this case)	ECF No. 153-7 at 29–31 (¶¶ 31–32); 137–139 (¶ 197); 144–146 (¶¶ 204–205), and record materials cited and quoted therein	ECF No. 155-56 at 29–31 (¶¶ 31–32); 137–139 (¶ 197); 144–146 (¶¶ 204–205), and record materials cited and quoted therein

REQUEST: Record evidence of Iconocare’s 510(k) clearance.

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 1	Expert Report of Christy Foreman (submitted in this case)	ECF No. 153-9 at 41–50 (¶¶ 110–136); 55–56 (¶¶ 150–52), and record materials cited and quoted therein	ECF No. 155-3 at 41–50 (¶¶ 110–136); 55–56 (¶¶ 150–52), and record materials cited and quoted therein
Cahoy Ex. 3	Expert Report of Dr. Robert D. Howe (submitted in this case)	ECF No. 153-11 at 74–75 (¶¶ 140–142), and record materials cited and quoted therein	ECF No. 152-2 at 74–75 (¶¶ 140–142), and record materials cited and quoted therein ECF No. 155-4 at 74–75 (¶¶ 140–142), and record materials cited and quoted therein
Cahoy Ex. 40	Iconocare 510(k) Clearance (SIS357813 – SIS357818)	ECF No. 153-47	ECF No. 155-28

DATED: September 11, 2023

By: /s/ Kathryn E. Cahoy

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